

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CTC Video Services, LLC)	CS Docket No. 97-80
)	
Request for Waiver of Section 76.1204(a)(1))	CSR-7176-Z
)	
)	
Implementation of Section 304 of the)	
Telecommunications Act of 1996)	
)	
Commercial Availability of Navigation Devices)	
_____)	

**Comments of the Consumer Electronics Association
on CTC Video Services, LLC Request for Waiver
of 47 C.F.R. § 76.1204(a)(1)**

May 3, 2007

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**Comments of the Consumer Electronics Association
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of 47 C.F.R. § 76.1204(a)(1)**

The Consumer Electronics Association (“CEA”) submits these comments in response to a request for waiver of Section 76.1204(a)(1) of the Commission’s rules by CTC VideoServices, LLC (“CTC”). While this Petitioner presents a waiver case that on first glance seems appealing, on closer reading it should not be, as the following facts emerge:

- This petitioner seeks a waiver with respect to all classes of devices, including the most sophisticated “PVRs” – not just limited function, “low end” set-top boxes – and admits that with respect to at least some of the models cited, CableCARD-reliant products are indeed available from its vendor.
- Petitioner claims, with no supporting reference or documentation, that the acquisition cost for HD and PVR navigation devices would be “double” that for non-CableCARD-reliant products. This is contrary to all evidence of record,¹

¹ See *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7056-Z, Comments of CEA on the NCTA Petition for Waiver of 47 C.F.R. § 1204(a)(1) at 7-8 (Nov. 30, 2006); *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Letter from Gary Shapiro, President and CEO, CEA, to The Honorable Kevin J. Martin, Chairman, FCC, et al (Nov. 20, 2006) (responding to NCTA’s

even accounting for the cable industry's failure, for nine years, to take advantage of scale economies or other "Moore's Law" efficiencies.

- Petitioner makes no clear reference to past, present, or future support of CableCARDS, to the obligations imposed by the "provision" part of Section 1204(a)(1), to Section 76.640 of Commission regulations, or to any past, present, or future intention to support CableCARD-reliant competitive navigation devices – the proximate goal of the regulation from which a waiver is sought.
- While the petitioner styles its waiver request as "temporary," the request is vague as to the petitioner's intention after the proposed 18-month period –
 - It is unclear whether Petitioner would in fact move to CableCARD-reliant products, and apparently if it does, it would do so only "on the request" of a customer² – a non-compliant policy, and an irrelevancy in light of the cable industry's demonstrated attitude and poor performance in informing consumers as to the availability of CableCARDS, and providing and supporting them.
 - Petitioner suggests, alternatively, that it might move to some "downloadable" security system but admits that at present it can obtain no assurance that such a system would comply with Commission regulations.

As in the case of the WOW waiver request on which CEA also comments today,³

this request actually boils down to being based on CTC's status in two respects: (1) CTC is an "overbuilder" competing with a better-financed incumbent cable operator, and (2)

letter to the Commission of October 31, 2006); *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Second Report And Order at ¶ 24 (rel. Mar. 17, 2005); *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, *Compatibility Between Cable Systems and Consumer Electronics Equipment*, PP Docket No. 0067, Consumer Electronics Industry Comments at 2-4 (Feb. 19, 2004); *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, *Compatibility Between Cable Systems and Consumer Electronics Equipment*, PP Docket No. 0067, Consumer Electronics Industry Reply Comments at 4-5 (Mar. 10, 2004); *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, *Ex parte* submission of Consumer Electronics Retailers Coalition Re Retention of POD Reliance at 3-4, Attachment (Declaration of Jack W. Chaney, Declaration of Colas Overkott) (Mar. 20, 2003); *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CEA *ex parte* submission at 2-3 (Nov. 23, 2004); *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Intel Corp. *ex parte* submission (Nov. 17, 2004).

² *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7176-Z, CTC Video Services, LLC Request for Waiver at 9 (Mar. 22, 2007).

³ *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7139-Z, Comments of CEA on WideOpen West Finance, LLC Request for Waiver of 47 C.F.R. § 1204(a)(1) (May 3, 2007) ("WOW CEA Comments"); re downloadable security, *see ex parte* letter from Julie M. Kearney to Marlene Dortch, Office of the Secretary, FCC, CS Docket No. 97-80, CSR-7131-Z, re "Emergency" petition of JetBroadband (Apr. 24, 2007) ("April 24 *ex parte* letter"). CEA incorporates by reference its WOW Comments, *id.*, and the April 24, 2007 *ex parte* letter of Julie Kearney with respect to BBT's assertions regarding the petition of Jet Broadband.

the incumbent, Time Warner, has the benefit of “grandfathered,” non-compliant navigation devices, whereas CTC would have to purchase all compliant ones. Without much, much more information, documentation, and analysis, neither circumstance can be sufficient to support grant of a waiver.

Status As An Overbuilder Should Not Alone Entitle A Cable Operator To A Waiver. CEA hereby incorporates by reference its Comments with respect to the waiver requests of overbuilders RCN and WOW.⁴ Whether or not the Commission chooses to give some additional consideration to a competitor of incumbent cable companies, the waiver cases presented should meet the Commission’s standards for granting *any* waiver of Section 629 regulations:

- Specific and limited product scope
- Verifiably limited time, after which the implementation would be demonstrably (not speculatively or in concept only) compliant
- Public benefit via *new* services and/or technology
- Demonstrated and documented efforts to support the proximate objective of the regulation from which a waiver is requested (*i.e.*, CableCARD reliance and a private sector national security interface)
- Compliance with other regulations, governing the same product, from which no waiver has been sought --
 - Provision of separate security modules (CableCARDS), as has also been required by Section 1204(a)(1) since July 1, 2000
 - Support of CableCARD-reliant navigation devices as has been required by 47 C.F.R. § 76.640 since July 1, 2004
 - A licensing regime for competitive navigation devices wherein limitations are imposed only based on harm to the network or prevention of theft of

⁴ Commercial Availability of Navigation Devices, CS Docket No. 97-80, CSR-7113-Z, Comments of the CEA on the RCN Corp. Request for Waiver of 47 C.F.R. § 76.1204(a)(1) (Mar. 5, 2007); WOW CEA Comments. With respect to RCN, see also the ex parte letters dated April 11, 16, 18, and 25, 2007 in CS Docket No. 97-80.

service, as has been required by Sections 76.1200 – 1205 since July 1, 2000⁵

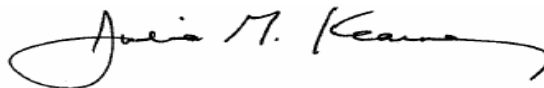
This Request, filed barely more than three months before the effective date of an obligation announced by the Commission almost nine years ago, has not demonstrated compliance as to any of these requirements, and has not even addressed several of them.

A Desire To Compete With Grandfathered Devices Should Also Not Automatically Entitle Petitioner To A Waiver. As is noted above, Petitioner's assertions as to the cost of new devices appear to be inaccurate and are in any case vague and unsupported. Nor is any accounting data provided as to its competitor's historical acquisition costs, which based on the operation of Moore's Law might in fact have been higher, for noncompliant devices, than those for Scientific Atlanta's compliant high-end devices are now. Nor is any data as to depreciation accounting, for Petitioner and its competitor, referenced or provided. Nor has Petitioner provided any projection as to the percentage of its subscribers who would receive non-compliant devices before Petitioner switches over to purportedly compliant devices. And even if compelling data on all such accounts were provided and open to public comment, such data still should be unavailing to Petitioner in the absence of any demonstrated and documented intention of the Petitioner to comply with other relevant regulations – primarily, the provision and support of CableCARDs to its subscribers who may wish to purchase competitive navigation devices, such as the TiVo S3 or a Digital Cable Ready television receiver.

⁵ Commercial Availability of Navigation Devices, CS Docket No. 97-80, CSR-7012-Z, Comments of the CEA on Request for Waiver of 47 C.F.R. § 76.1204(a)(1) (June 15, 2006); Commercial Availability of Navigation Devices, CS Docket No. 97-80, CSR-7056-Z, Comments of the CEA on the National Cable & Telecommunications Association Petition for Waiver of 46 C.F.R. § 76.1204(a) (Nov. 30, 2006). CEA hereby incorporates by reference its Comments with respect to the Comcast and NCTA waiver requests in CS Docket No. 97-80.

The Commission Should Not Lightly Grant Waivers, Particularly Where A Compliant Solution Is Or Should Have Been Available. The Commission determined nine years ago that the best way to fulfill Congress's mandate to "assure the commercial availability" of competitive navigation devices is to require cable operators to support navigation devices purchased at retail, and later to require operators to rely on the same physically separable conditional access technology that they support for retail devices. The Commission has repeatedly reconfirmed its commitment to this regulatory scheme and the Court of Appeals has twice rejected challenges to it.⁶ It is time for the Commission to enforce its competitive navigation device rules, including the need for a detailed and sufficient record of compliance with all past, present, and future requirements before consideration is given to a waiver based on some special status of the petitioner. And where compliant solutions are available, or should have been available but for the refusal of a dominant industry vendor to provide one, waivers should not be granted at all.

Respectfully submitted,



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⁶ *General Instrument Corp. v. FCC*, 213 F.3d 724 (D.C. Cir. 2000); *Charter Communs., Inc. v. FCC*, 460 F.3d 31 (D.C. Cir. 2006).

CERTIFICATE OF SERVICE

I do hereby certify that on May 3, 2007 I caused a true and correct copy of the foregoing Comments of the Consumer Electronics Association on the CTC Video Services, LLC Request for Waiver of 47 C.F.R. § 76.1204(a)(1) to be served via overnight mail on the following:

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/s/ Patricia O'Keefe
Patricia O'Keefe